APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,201	02/27/2004	Craig Allan Dunk	P1646US00	4692

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EXAMINER
HAILU, KIBROM T

ART UNIT	PAPER NUMBER
2416	

MAIL DATE	DELIVERY MODE
10/24/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/787,201	DUNK, CRAIG ALLAN
	Examiner	Art Unit
	KIBROM T. HAILU	2416

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-38*.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Ricky Ngo/
Supervisory Patent Examiner, Art Unit 2616

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 20081021

 Continuation of 11. does NOT place the application in condition for allowance because: Regarding 35 U.S.C. 112, the Examiner disagrees with the Applicant's argument that "A computer-readable storage medium containing a set of instructions executable by a processor". The Examiner carefully read the cited paragraph [0015]. However, the manager 70 determines the quality of the link or strength of the signal level. It doesn't say a computer-readable storage medium stores instructions to be executed by a processor to control the electronic device as claimed. The Applicant argues that it is well known and necessarily involves a computer-readable storage medium when executing software objects. With all due respect, it doesn't matter whether it is well known or not, it must be clearly described in the specification.

Regarding the 35 U.S.C. 103(a), the Applicant argues Stephens doesn't disclose, "repeating said transmitting step unitl said transmitting step fails" and is not combinable with Kitchin. The Applicant argues based on the limitation that is not cited by the Examiner. That is, the Examiner provides Kitchin not Stephens for the limitation that the Applicant argues. The Examiner didn't say that Stephens continue transmitting the packets unitl the transmitting step fails, unitl a NACK received or ACK is not received. However, it continuously transmits the packets and retry the transmission when the packets are not successfully received or transmitted. But, Kitchin cures the shortcoming of Stephens. As cited and explained in the office action, Kitchin teaches transmitting the individual packets and waits for an acknowledgement. As long as it receives the acknowledgements the transmitting device continues sending the packets. If a packet fails or not acknowledged, the transmitting device retransmits the packet and wait for acknowledgement. And that is exactly what is disclosed in the Applicant's specification (paragraph [0020]). With all due respect, the Applicant's argument that Stephens doesn't mention waiting for acknowledgement is not relevant because the Examiner doesn't rely on Sptephens for that limitation but Kitchin. The two references are perfectly combinable because first they are on the same endeavor. Second, incorporating the repeat transmitting unitl the transmission fails or the delivery of a packet is not successful (not acknowledged) of Kitchin into the teachings of Stephens in order to have reliable service that would guarantee the reception of packets. The problem with this kind (continue transmission of a packet unit fail or stop and wait) of delivery of packet is that the source has to wait unitl for sometime before it transmits the next packet. However, it guarantees reception of the transmitted packets because the source doesn't send the next packet unless it knows it is received. It knows that the packet is received because it recieves acknowledgement response. Therefore, the cited refereces are perfectly combinable.